

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 4, 2006 Session

IN RE MEAGAN E.

**Appeal from the Chancery Court for Hamilton County
No. 04-A-061 W. Frank Brown, III, Chancellor**

No. E2005-02440-COA-R3-PT - FILED MAY 30, 2006

The trial court terminated the parental rights of Heather E. (“Mother”) to her child, Meagan E. (DOB: March 28, 2000), upon finding, by clear and convincing evidence, that grounds for termination existed and that termination was in the best interest of the child. Mother appeals. We affirm in part and vacate in part.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed in Part; Vacated in Part; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Lloyd A. Levitt, Chattanooga, Tennessee, for the appellant, Heather E.

Paul G. Summers, Attorney General and Reporter, and Lauren S. Lamberth, Assistant Attorney General, for the appellee, State of Tennessee Department of Children’s Services.

Glenna M. Ramer, Chattanooga, Tennessee, for the appellee, Janice Beasley.

OPINION

I.

Meagan E. was born to Mother and Carlos G. (“Father”)¹ on March 28, 2000. When Meagan was approximately eight months old, Mother met Carrie Paradis; Mr. Paradis was wearing an ankle bracelet used by the police to track his movements. Shortly after meeting Mr. Paradis, Mother and Meagan moved into his apartment. Up until that time, the only drug Mother had used was marijuana, but after meeting Mr. Paradis, Mother began regularly using methamphetamine (“meth”).

¹It appears from the record that Mother and the child never resided with Father after the child’s birth.

In October, 2001, Mr. Paradis knocked Mother to the ground while she was holding Meagan. Both Mother and Meagan were taken to the hospital for treatment. Mother and Meagan then moved out of Mr. Paradis's apartment.

Two months later, in December, Meagan went to her pediatrician with a cough, runny nose, low grade fever, and screaming fits. The pediatrician diagnosed Meagan as having an upper respiratory infection and night terrors. Meagan returned to the pediatrician one week later with crying spells and "go[ing] into a daze." At that time, she was diagnosed with psychological trauma, behavioral problems, and screaming fits, related to witnessing – and being a part of – her Mother being knocked to the ground. The pediatrician referred Mother to a psychologist and Meagan to a neurologist. Mother failed to keep Meagan's appointment with the neurologist.

In June, 2003, DCS began an investigation of Mother after receiving reports that she was using meth and failing to supervise her child. Mother admitted to a DCS case worker that she was using drugs, but explained that she was in the process of moving to Florida to live with her mother, Sharron, where she hoped to improve her life. The case worker agreed to let Mother move to Florida with Meagan, provided Sharron contacted DCS in the event Mother decided to leave that state. After Mother moved to Florida, DCS closed her case.

Four months later, Mother and Meagan returned to Tennessee and once again moved in with Mr. Paradis at the home of his parents. Sharron never informed DCS that her daughter and granddaughter had moved back to Tennessee.

On October 30, 2003, the police caught Mr. Paradis with 30 grams of meth. Mr. Paradis admitted that he had a meth lab in his house and consented to a search of the premises by Officer Duane Hill, an expert in meth labs. As soon as Mother and Meagan opened the door to the house, Officer Hill smelled a meth lab. He immediately ventilated the house, because he knew the chemicals in the house had the potential to cause an explosion. Officer Hill testified that the chemicals also can contribute to eye, sinus, and skin problems.

Officer Hill testified that Mr. Paradis "had quite a lab set up in the bedroom," and that this lab included various ingredients of meth, such as Coleman fuel, muriatic acid, acetone, red devil lye, and hydrogen peroxide. Most of these ingredients were within the reach of Meagan, whose bedroom was some seven feet from the lab. Officer Hill was able to discern that the most recent "cook" of the meth had occurred within 24 hours, and that Mr. Paradis's lab was of the type that required someone's presence for the cook. Mother admitted to watching Mr. Paradis cook the meth while she and Meagan were living in the house.

Officer Hill transported Mother and Meagan to the emergency room. Meagan tested negative for meth at that time, but both Officer Hill and Meagan's pediatrician testified that a negative meth test does not conclusively prove that Meagan had not been exposed to meth. Mother was then arrested for reckless endangerment of a child. In March, 2004, the juvenile court determined that Meagan was dependent and neglected in that Mother had severely abused her.

In the six months that followed the October, 2003, drug bust, Meagan was moved around several times. Finally, on April 29, 2004, Janice Beasley, Meagan's maternal great-aunt, offered to take custody of the child. Meagan began seeing a child psychologist in May, 2004. While the psychologist observed that Meagan's play was initially "chaotic," it improved while she was living with Ms. Beasley, to the point that her play was "much more focused on affectionate relationships between parents and kids."

On September 20, 2004, Ms. Beasley filed a petition in the trial court seeking the termination of Mother's parental rights with respect to Meagan; in her petition, Ms. Beasley also sought the child's adoption. Ms. Beasley based her petition to terminate on Mother's "chronic drug abuse," the parents' "inability to provide a wholesome environment for the [c]hild," and Father's "abandonment of the child." DCS filed a notice of appearance on March 7, 2005. The agency alleged that its legal custody of Meagan made it an essential party to the proceedings.

The trial court heard the case over five days in April, June, and August, 2005. On September 13, 2005, the court entered its final order, terminating the parental rights of Mother and Father, finding, by clear and convincing evidence, that Mother was guilty of severe child abuse, and that the termination of Mother's and Father's parental rights was in Meagan's best interest. Mother appeals from this order; Father did not appeal.

II.

It is well-settled that "parents have a fundamental right to the care, custody, and control of their children." *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)). However, this is a qualified right, which may be terminated if there is clear and convincing evidence justifying termination under the pertinent statute. *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). Clear and convincing evidence is evidence which "eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence." *O'Daniel v. Messier*, 905 S.W.2d 182, 188 (Tenn. Ct. App. 1995).

III.

Our *de novo* review of parental termination cases differs from that of an ordinary bench trial. This court has addressed this difference in *In re M.J.B.*, 140 S.W.3d 643 (Tenn. Ct. App. 2004), in which we stated the following:

Because of the heightened burden of proof required by Tenn. Code Ann. § 36-1-113(c)(1), we must adapt Tenn. R. App. P. 13(d)'s customary standard of review for cases of this sort. First, we must review the trial court's specific findings of fact *de novo* in accordance with Tenn. R. App. P. 13(d). Thus, each of the trial court's specific factual findings will be presumed to be correct unless the evidence

preponderates otherwise. Second, we must determine whether the facts, either as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the elements required to terminate a biological parent's parental rights.

Id. at 654 (citations omitted). Thus, our determination as to whether “the facts, either as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the elements required to terminate a biological parent's parental rights” is a question of law. Because of this, we accord no deference to the trial court's legal judgment on this issue. ***Brumit v. Brumit***, 948 S.W.2d 739, 740 (Tenn. Ct. App. 1997).

IV.

Tenn. Code Ann. § 36-1-113(g) lists the grounds upon which parental rights may be terminated, and “the existence of any one of the statutory bases will support a termination of parental rights.” *In re C.W.W.*, 37 S.W.3d 467, 473 (Tenn. Ct. App. 2000). The issues raised in the pleadings, and the trial court's findings, implicate the following statutory provisions:

Tenn. Code Ann. § 37-1-147 (2005)

(a) The juvenile court shall be authorized to terminate the rights of a parent or guardian to a child upon the grounds and pursuant to the procedures set forth in title 36, chapter 1, part 1.

* * *

Tenn. Code Ann. § 36-1-113 (2005)

(a) The chancery and circuit courts shall have concurrent jurisdiction with the juvenile court to terminate parental or guardianship rights to a child in a separate proceeding, . . . by utilizing any grounds for termination of parental or guardianship rights permitted in this part or in title 37, chapter 1, part 1 and title 37, chapter 2, part 4.

* * *

(c) Termination of parental or guardianship rights must be based upon:

(1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and

(2) That termination of the parent's or guardian's rights is in the best interests of the child.

* * *

(g) Initiation of termination of parental or guardianship rights may be based upon any of the following grounds:

* * *

(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care pursuant to the provisions of title 37, chapter 2, part 4;

* * *

(4) The parent or guardian has been found to have committed severe child abuse as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against the child who is the subject of the petition . . .;

* * *

Tenn. Code Ann. § 37-1-102 (2005)

(b) As used in this part, unless the context otherwise requires:

* * *

(21) "Severe child abuse" means:

* * *

(D) Knowingly allowing a child to be present within a structure where the act of creating methamphetamine, as that substance is identified in § 39-17-408(d)(2), is occurring;

* * *

Tenn. Code Ann. § 37-2-403 (2005)

(a)(1) Within thirty (30) days of the date of foster care placement, an agency shall prepare a plan for each child in its foster care. . . .

* * *

(2)(A) The permanency plan for any child in foster care shall include a statement of responsibilities between the parents, the agency and the caseworker of such agency. . . .

* * *

(C) Substantial noncompliance by the parent with the statement of responsibilities provides grounds for the termination of parental rights, notwithstanding other statutory provisions for termination of parental rights,

V.

Mother raises two primary issues for our consideration, which issues raise the following four questions:

- (1) Does the evidence preponderate against the trial court's finding that Mother's parental rights should be terminated based upon the commission of severe child abuse?
- (2) Does the evidence preponderate against the trial court's finding that Mother's parental rights should be terminated based upon the failure to substantially comply with the permanency plan?
- (3) Does the evidence preponderate against the trial court's finding that Mother's parental rights should be terminated based upon abandonment for willful failure to visit?
- (4) Does the evidence preponderate against the trial court's finding that termination is in the best interest of the child?

A.

Mother first contends that the evidence preponderates against the trial court's finding that her parental rights should be terminated because she had committed severe child abuse by allowing Meagan to live in a house where meth was being manufactured. Tenn. Code Ann. § 36-1-113(g)(4)

provides that parental rights may be terminated upon a finding that a parent has committed severe child abuse against the child who is the subject of the petition. “Severe child abuse” is defined in § 37-1-102(b)(21)(D) as “[k]nowingly allowing a child to be present within a structure where the act of creating methamphetamine, . . . , is occurring.” While Mother does not contest the fact that Meagan “was present inside the residence where ingredients used in the making of methamphetamine were also present,” she argues that “there was absolutely no proof that [Mother] allowed the child to be present within the structure where the act of creating methamphetamine was occurring as required by the statute.” In other words, Mother argues for a very narrow interpretation of the statute. According to her interpretation, one can be guilty of severe child abuse with respect to meth only if the child is in a residence when a “cook” was actually occurring.

First, we note that Mother’s own testimony belies her contention that she and Meagan were not present in the house when Mr. Paradis was creating or “cooking” the meth. At trial, Mother admitted that both she and the child spent the night in the house on October 29, 2003, the evening before Mr. Paradis allegedly cooked the meth. While she initially testified that the child was not present while Mr. Paradis was cooking the meth on October 30, she later testified that she and the child had been in the house “all day” on October 30.

In fact, it is immaterial under the statute, Tenn. Code Ann. § 37-1-102(b)(21)(D), whether Meagan was actually in the residence at the time of the “cook.” Mother’s suggested interpretation of the statute ignores the clear import of the statute; that is, the statute is designed to protect children from being present in structures containing meth labs. The harmful effects of meth linger long after the actual creation has been completed. Officer Hill testified that meth absorbs into “anything porous,” such as carpet, sheetrock, stuffed toys, and bedding. Certainly, the chemicals used to manufacture meth are highly flammable and can lead to explosions and severe burns. Many of the chemicals, such as iodine and red phosphorous, are also highly poisonous. Officer Hill testified that most of the chemicals found in Mr. Paradis’s bedroom were within Meagan’s reach. Moreover, Meagan’s pediatrician testified that Meagan was brought in on at least twelve occasions between October, 2000, and January, 2003, suffering from sinusitis and upper respiratory infections, which symptoms “are consistent with exposure to methamphetamine.”

While Mother claims that she did not know Mr. Paradis was operating a meth lab until the day before the bust, when he allegedly brought the ingredients into the house for the first time, Mother admits that Meagan was in the house both before and after – and potentially during – the cook. Thus, she “knowingly” allowed Meagan to be present in a house where methamphetamine was being created. The evidence does not preponderate against the facts found by the court to underpin its determination that Mother committed severe child abuse. We further conclude that the established facts show, clearly and convincingly, a ground for termination. Accordingly, we find no error in the trial court’s determination that the severe child abuse visited upon Meagan by Mother justifies the termination of her parental rights.

B.

Mother also contends that the trial court erred in finding that she failed to substantially comply with the requirements of a permanency plan. We disagree.

Mother's permanency plan, which was dated November 17, 2003, required her to do the following by May 17, 2004: (1) provide a safe, stable, and drug-free home for her child; (2) obtain an alcohol and drug assessment, follow through with all recommendations, and submit to random drug screens when requested; (3) obtain a parenting and psychological assessment, and follow through with all recommendations; (4) obtain domestic violence counseling; and (5) provide for the financial needs of her household by obtaining stable, legal, and verifiable employment.

At the time of trial, the court found that Mother was living with her new male interest, her fiancé, Brian Clements. Mr. Clements was a drug-user. The court found that this living arrangement "[did] not provide a drug-free home" as required by the plan. Second, the trial court found that Mother failed two drug screens during the six-month period set for completion of the plan and that she admitted to having used cocaine as recently as June, 2005. Finally, the trial court found that Mother "admitted that she alone could not provide the necessary funds to meet all of the expenses required for Meagan and herself," as required by the plan. Thus, the trial court found there was clear and convincing evidence that Mother failed to substantially comply with the permanency plan.

With respect to Mother's contention that DCS "had given up" on her well before the target completion date of May 17, 2004, we note that Tenn. Code Ann. § 37-1-166(g)(4)(A) (2005) provides that DCS will be excused from making reasonable efforts to assist a parent when a court has determined that the parent has subjected the child to "aggravated circumstances," which have been defined to include severe child abuse. *See* Tenn. Code Ann. § 36-1-102(9) (2005). In March, 2004, the juvenile court found that Mother had committed severe child abuse, thus excusing DCS from making reasonable efforts.

Mother also relies on the case of *In re M.J.M., Jr.*, No. M2004-02377-COA-R3-PT, 2005 WL 873302 (Tenn. Ct. App. M.S., filed April 14, 2005), for the proposition that a parent addicted to meth should be given additional time within which to complete the requirements of the permanency plan. Mother's reliance on this case is misplaced, because the facts there are easily distinguishable from those in the case at bar.

The mother in *M.J.M.* had raised her three children as a single mother prior to marrying a co-worker. *Id.*, at * 1. They had, by all accounts, a very happy family until both the mother and her husband lost their jobs, at which time the husband, overcome by stress and frustration, began physically abusing the mother. *Id.* The mother and her three children were forced to leave town in order to get away from the abusive husband, and the family moved from one domestic violence shelter to another. *Id.* Eventually, the mother – who had no prior history of any kind of substance abuse – fell in with the wrong crowd and began abusing meth. *Id.*, at *2. This led to an investigation by DCS, which resulted in the removal of the children from her custody. *Id.*

DCS developed a permanency plan for the mother, giving her one year to complete the requirements of the plan. *Id.* However, after only six months, DCS filed a petition to terminate the mother's parental rights. *Id.*, at *3. Up until that point, the mother had done little to comply with the plan, but after the petition was filed, she truly made a herculean effort in an attempt to fulfill the requirements of the plan. *Id.*, at *3-*4. Despite these efforts, the trial court found, *inter alia*, that she had not substantially complied with the plan; accordingly, the court terminated Mother's parental rights. *Id.*, at *4.

In vacating the trial court's termination of the mother's parental rights, this court acknowledged the "powerfully addictive" nature of meth; that it "has one of the highest recidivism rates of all abused substances"; and that research shows that "a severe methamphetamine abuser's brain functioning does not return to normal for up to one year after the abuse ends." *Id.*, at *10. In recognizing the great lengths that the mother went to in order to complete the requirements of the plan, this court found that her efforts, while perhaps initially "too little," were not "too late." *Id.*, at *11.

In the instant case, Mother made no such great efforts to complete her requirements. In fact, she admitted to using drugs even after the target date for completion of her permanency plan. She failed to find drug-free housing for herself and her child, and she was unable to support herself and her child, as required by the plan. In short, while it may be appropriate in some cases to grant meth abusers leniency and additional time to complete the requirements of a permanency plan, this is not one of those cases.

We agree with the trial court that the evidence is clear and convincing that Mother failed to substantially comply with the requirements of her permanency plan.

C.

In addition to her other arguments with respect to grounds for termination, Mother states the following in her brief:

The Court's conclusion that [Mother] abandoned Meagan by willfully failing to visit her in the four months preceding the filing of the termination petition in September 20, 2004, was not supported by the record. There is no showing that her failure to visit was in any way willful. As stated in the case of [*In re M.J.M., Jr.*], a parent's failure to visit a child may provide grounds for terminating the parent's parental rights, but only if the parents' failure to visit was willful. Additionally, the Tennessee Supreme Court has held that ["] an element of intent must also be applied to the definition of abandonment. . . ."

(Citations omitted). DCS² concedes that the evidence before the trial court does not support the court's finding of abandonment based upon a willful failure to visit. Accordingly, we vacate so much of the trial court's judgment as is based upon a finding of abandonment for willful failure to visit.

D.

Finally, Mother contends that the evidence does not support a finding that termination was in Meagan's best interest. The factors a court must consider when deciding whether termination is in a child's best interest – to the extent that any given factor is implicated by the facts of a given case – are set forth in Tenn. Code Ann. § 36-1-113(i) (2005):

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances

²Ms. Beasley's brief is silent on this issue. We interpret this silence to mean that she has abandoned any defense of the trial court as to this issue.

as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to [Tenn. Code Ann.] § 36-5-101.

This list, however, is "not exhaustive," and there is no requirement that every factor must appear "before a court can find that termination is in a child's best interest." *Dep't of Children's Servs. v. T.S.W.*, No. M2001-01735-COA-R3-CV, 2002 WL 970434, at *3 (Tenn. Ct. App. M.S., filed May 10, 2002).

In the instant case, the trial court recognized that Mother was not seeking to regain custody of Meagan right away, but rather wished to recommence visitation. Mother conceded that Meagan should remain in the custody of Ms. Beasley, or someone else, at the present time. However, the trial court found that Mother had not made a lasting adjustment of circumstances such that it would be safe for Meagan to be in her home, given that Mother lives with a man who was found to be a drug-user and that Mother had continued to use drugs herself. *See* Tenn. Code Ann. § 36-1-113(i)(1), (2), (7). Mother is dependent upon her fiancé to provide her with housing. *See* § 36-1-113(i)(1), (2). After several foster homes, Meagan is happy and comfortable with Ms. Beasley, who desires to adopt her. *See* § 36-1-113(i)(5). There is evidence that, after receiving cards and gifts from Mother while Meagan was living with Ms. Beasley, Meagan regressed emotionally and physically. *See* § 36-1-113(i)(4) & (5). More importantly, Mother was found to have committed severe child abuse against Meagan, by allowing her to reside in a structure where meth was being created. *See* § 36-1-113(i)(6).

Based upon all of this evidence, we cannot say that the evidence preponderates against the trial court's findings supporting its determination that termination is in the best interest of the child. The facts show this clearly and convincingly.

VI.

The judgment of the trial court is affirmed in part and vacated in part. This case is remanded to the trial court for enforcement of that court's judgment and for the collection of costs assessed below, all pursuant to applicable law. Costs on appeal are taxed to the appellant, Heather E.

CHARLES D. SUSANO, JR., JUDGE